



FEDERAL ENERGY REGULATORY COMMISSION
Office of the Chairman

April 12, 2021

The Honorable John Barrasso, M.D.
United States Senate
Washington, D.C. 20510

Dear Senator Barrasso:

Thank you for your March 30, 2021 letter concerning Algonquin Gas Transmission, L.L.C.'s (Algonquin) Weymouth Compressor Station (Station), a part of the Atlantic Bridge Project (Docket No. CP16-9-000). Your letter and this reply have been placed in the docket for this proceeding.

As referenced in your letter, on February 18, 2021, the Commission issued an order directing paper briefing to further consider concerns raised regarding the operation of the Station.¹ That order followed the Commission's staff's September 2020 authorization allowing Algonquin to commence operation of the Station.² As explained in the Briefing Order, a group of local residents, officials, and other entities sought rehearing of the decision to allow the Station to begin operation,³ and the Commission also received numerous other comments expressing concerns regarding the Station's operations. In particular, the pleadings describe two emergency shutdowns of the Station in September 2020 following a significant unplanned release of natural gas and raise concerns about the impact of operations on local environmental justice communities. A third unplanned release was reported last week.⁴

¹ *Algonquin Gas Transmission, LLC*, 174 FERC ¶ 61,126 (2021) (Briefing Order). Algonquin and several trade organizations have sought rehearing of the Briefing Order.

² *Algonquin Gas Transmission, LLC*, Docket No. CP16-9-000, at 1 (Sept. 24, 2020) (delegated order) (Authorization Order).

³ On October 23, 2020, a request for rehearing was filed by Fore River Residents Against the Compressor Station, the City of Quincy, Massachusetts, Weymouth Councilor Rebecca Haugh, Michael Hayden, and Food and Water Watch.

⁴ Enbridge, April 6, 2021 Letter to Massachusetts Department of Environmental Protection, Southeast Regional Office—Notification of Unplanned Natural Gas Release, Algonquin Gas Transmission, LLC, Weymouth Compressor Station (Transmittal No. X266786).



As I explained at the Commission's February 18, 2021 open meeting, the Briefing Order does not revisit or otherwise reopen the certificate for the Atlantic Bridge Project. In 2017, the Commission exercised its public interest authority under section 7 of the Natural Gas Act (NGA) and found the Atlantic Bridge Project consistent with the public convenience and necessity, subject to the environmental and other conditions in the certificate.⁵ That certificate is now final.

The February 18 Briefing Order, which was supported by a bipartisan group of Commissioners, addresses a different matter. It examines whether new information and changed circumstances raised in the record of this proceeding require the Commission to take action to protect the public interest. Because that proceeding is currently pending before the Commission, I cannot address the merits of the questions raised in the Briefing Order. Instead, I offer general responses to the questions posed in your letter.

1. Does FERC have statutory authority to revisit final certificate orders? If so, please cite the specific statute and thoroughly explain your reasoning.

As explained above, the Commission is not revisiting the final certificate order for the Atlantic Bridge Project. Instead, the Commission is fulfilling its ongoing responsibility to the public interest, which continues throughout the construction and operation of certificated facilities, and even after the certificate becomes final.

Under section 7 of the NGA, the Commission must ensure that authorized facilities are consistent with the public interest, and it has "the power to attach to the issuance of a certificate and to the exercise of the rights granted . . . such reasonable terms and conditions as the public convenience and necessity may require."⁶ Before a new interstate pipeline may commence operation, there are three major authorizations that the Commission must issue: (1) a certificate of public convenience and necessity; (2) authorization to commence construction; and (3) authorization to commence operations. At each of these stages, the Commission must satisfy its continuing public interest responsibility by considering the factors relevant to the authorization in question. For example, when issuing an authorization to commence construction, the Commission considers, among other things, whether the project has received all federal authorizations

⁵ *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061, at P 31, *order on reh'g*, 161 FERC ¶ 61,255 (2017), *aff'd sub nom.*, *Town of Weymouth v. FERC*, No. 17-1135, 2018 WL 6921213 (D.C. Cir. Dec. 27, 2018) (unpublished opinion).

⁶ 15 U.S.C. § 717f(e).



necessary to commence construction.⁷ The Commission may also consider whether additional conditions or mitigation measures are necessary and appropriate pursuant to that authorization.⁸ In issuing each of these three major authorizations, however, the Commission is not revisiting any prior final order, but rather complying with its ongoing responsibility to the public interest under the NGA.

2. *Does FERC have statutory authority to consider “additional mitigation measures” regarding air emissions or public safety concerns after it has issued a Certificate of Public Convenience and Necessity for a pipeline project? If so, please cite the specific statute and thoroughly explain your reasoning.*

As explained above, NGA section 7 authorizes the Commission to condition the issuance of certificates and the exercise of the rights granted to certificate holders. One way the Commission implements this statutory conditioning authority is through the delegation to the Director of the Office of Energy Projects of the “authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation” of the project, including by modifying certificate conditions and designing and implementing “any additional measures deemed necessary . . . to ensure continued compliance with the intent of the environmental conditions” attached to the certificate.⁹

⁷ See, e.g., *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 at App. B, Environmental Condition 9.

⁸ See *Rover Pipeline, LLC*, Docket No. CP15-93-000, at 1-2 (July 12, 2017) (delegated letter order) (directing the rehabilitation and restoration of areas affected by the project before the project sponsor may receive an in-service authorization for that portion of the project); *Rover Pipeline, LLC*, Docket No. CP15-93-000, at 2-3 (May 10, 2017) (delegated letter order) (prohibiting horizontal directional drilling activities and requiring the project sponsor to obtain independent third-party contractor to analyze all drilling activities at the Tuscarawas River site).

⁹ 18 C.F.R. § 375.308(x)(7) (2020); see *Mountain Valley Pipeline, LLC*, 174 FERC ¶ 61,192, at P 17 (2021) (“[T]he Director of [the Office of Energy Projects] acts pursuant to his delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during the construction of natural gas facilities.”); *Mountain Valley Pipeline, LLC*, 172 FERC ¶ 61,193, at P 6 (2020) (The Director of the Office of Energy Projects, or the Director’s designee, may “take whatever steps are necessary to ensure the protection of all environmental resources” during project construction and operation).



That authority is used most often to require additional or different mitigation measures to ensure that a certificate holder can comply with its certificate conditions when unexpected circumstances arise or to address concerns regarding the certificate holder's compliance with those existing conditions, whether before or after the project enters operation. For example, the Commission has required certificate holders to perform additional mitigation to protect or restore private property affected by construction along the pipeline route¹⁰ and to address new safety concerns, such as cracks in tanks containing liquified natural gas.¹¹

3. *What are examples of “changed circumstances” that would prompt the opening of a new proceeding for the purpose of addressing new issues bearing on the issuance of a Certificate of Public Convenience and Necessity years after the issuance of the same certificate?*

As a general matter, changed circumstances include situations in which significant new information has come to light that was not or could not reasonably have been presented to the Commission prior to its certificate orders. Depending on the nature of that new information, additional mitigation measures could be necessary in order to protect important aspects of the public interest, such as human health and safety. For example, consider the situation in which a major geological fault is discovered near the certificated facilities. Under those circumstances, I would think that the Commission has no choice but to consider whether additional mitigation measures are necessary to protect the facility—and, by extension, the surrounding community—from the risk of seismic activity.

In addition, it is not uncommon for more minor unexpected developments to arise during construction, or sometimes many years later, which require changes to the

¹⁰ See, e.g., *Spire STL Pipeline LLC*, 174 FERC ¶ 61,219 (2021), at PP 11-39 (requiring Spire to conduct further restoration work to address concerns restoration of agricultural properties); *Midship Pipeline Co., LLC*, 174 FERC ¶ 61,220, at P 10 (2021) (requiring Midship to resolve outstanding restoration issues in consultation with landowners).

¹¹ Federal Energy Regulatory Commission and U.S. Department of Transportation- Pipeline and Hazardous Materials Safety Administration, Joint Corrective Action Order issued to *Sabine Pass Liquefaction, LLC*, July 9, 2019, in Docket Nos. CP13-552-000, CP04-47-000, CP05-396-000, CP11-72-000, and CP13-2-000.



mitigation measures imposed in the original certificate.¹² That is due at least in part to the fact that an NGA section 7 certificate will often prescribe a maintenance regime that continues to apply after a facility enters operations.¹³ The exercise of those ongoing responsibilities during a facility's operational life can itself create the need for additional mitigation or conditions.

4. *Has FERC undertaken an analysis on the impacts to reliability and affordability of natural gas and electric service or the impacts to jobs if pipeline projects that the Commission has found to be necessary can be collaterally attacked after the Commission has issued a certificate for such projects? If not, does the Commission have plans to conduct such an analysis?*

The Commission actively monitors and assesses trends in natural gas and electric markets, and Commission staff routinely issues reports addressing the outlook for those markets and identifying potential reliability issues. Indeed, as in the NERC report referenced in your letter, Commission staff's 2020-2021 Winter Energy Market Assessment cited limited pipeline capacity as a contributing factor to constraints on electric and natural gas supplies in the Northeast.¹⁴ The Commission takes these concerns very seriously, and is undertaking initiatives that will include further consideration of these matters.¹⁵ However, because the Commission does not permit collateral attacks on pipeline certificate orders, an analysis of potential impacts to reliability, affordability, and jobs from such collateral attacks is unnecessary.

¹² See Director of the Office of Energy Projects' October 15, 2019 Cessation of Certain Activities Order for Mountain Valley Pipeline, LLC, issued in Docket No. CP16-10-000 (this included direction to cease construction activity and restore and stabilize the right-of-way).

¹³ See, e.g., *Brian Hamilton*, 141 FERC ¶ 61,229, 62,147 (2012) (directing additional mitigation following maintenance of certain facilities constructed in 1947).

¹⁴ See Commission Staff, Winter Energy Market and Reliability Assessment 2020/2021, <https://cms.ferc.gov/media/updated-winter-assessment-2020-2021-report>

¹⁵ See, e.g., *Climate Change, Extreme Weather, and Electric System Reliability*, Docket No. AD21-13-000.



If I can be of any further assistance with this or any other Commission matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, which appears to read "Dick Glick", is positioned above the printed name and title.

Richard Glick
Chairman